

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT LEASING COMPANY,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED

April 18, 2006

No. 259114

Wayne Circuit Court

LC No. 03-326184-CH

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

In this quiet title action, defendant appeals as of right the trial court's order granting summary disposition for plaintiff. We reverse and remand for dismissal without prejudice.

Defendant was the record owner of certain real property for which the property taxes went unpaid. Plaintiff bid on the property at tax sale and obtained a tax deed. Plaintiff sought to perfect its title pursuant to MCL 211.79a, which governs quiet-title actions on abandoned, tax-delinquent property. The trial court found that plaintiff had satisfied the requirements of MCL 211.79a and granted summary disposition, quieting title in plaintiff. Defendant contends that plaintiff failed to comply with MCL 211.79a, and that the trial court therefore erred.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Because the trial court considered material outside the pleadings, we review its decision under MCR 2.116(C)(10). A motion under (C)(10) is properly granted when the evidence fails to establish any genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This case involves questions of statutory interpretation and application, which we also review de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). "If the language of a statute is clear, no further analysis is necessary or allowed." *Id.*

Defendant correctly argues that plaintiff failed to comply with the requirements of MCL 211.79a. Taken together, MCL 211.79a(1) and MCL 211.79a(4) require a tax deed holder to perform numerous steps in order to quiet title in abandoned property, one of which is providing the circuit court with "an affidavit from the county treasurer certifying the lack of payment within the ninety-day redemption period." MCL 211.79a(1)(f)(iv). For a document to constitute a "valid affidavit" it must be: "(1) a written or printed declaration or statement of facts, (2) made

voluntarily, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.” *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 711; 620 NW2d 319, 323 (2000), citing *People v Sloan*, 450 Mich 160, 177 n 8; 538 NW2d 380 (1995).

Plaintiff attempted to satisfy the requirement in MCL 211.79a(1)(f)(iv) by submitting an unsworn certificate purportedly issued by the Wayne County treasurer. But because the certificate was not notarized or confirmed by oath, it did not constitute a valid affidavit sufficient to satisfy MCL 211.79a(1)(f)(iv). *Detroit Leasing Co v City of Detroit*, 269 Mich App 233; ___ NW2d ___ (2005), slip op pp 1-2.

Defendant also contends that the property in question was not “abandoned.” To satisfy the requirements of MCL 211.79a, a tax deed holder must show that the property is “abandoned.” Property qualifies as “abandoned” only if certain conditions are met, including:

The owner or any person with a legal interest in the abandoned property, before the judgment of foreclosure is entered, *does not give a written affidavit to the tax deed holder and record a duplicate original in the office of the register of deeds* of the county in which the abandoned property is located stating that the owner or person with a legal interest in the abandoned property is occupying or intends to occupy the abandoned property. [MCL 211.79a(4)(d) (emphasis added).]

Defendant argues that it submitted an affidavit sufficient to prevent a finding that the property was abandoned. We disagree.

It is true that defendant properly recorded an affidavit stating that it intended to occupy the property for an expansion of City Airport. This affidavit was in writing, signed by an authorized employee of defendant, and properly notarized. However, despite the command of MCL 211.79a(4)(d) that the property owner “give [the] written affidavit to the tax deed holder,” the record reveals that defendant never gave the signed and notarized affidavit to plaintiff. Instead, the record shows that plaintiff was served only with an unsigned copy of the “affidavit,” which was neither notarized nor otherwise supported by oath. As noted above, a document that is not notarized and confirmed by oath is not a valid affidavit. *Id.* The unsigned, unsworn document served on plaintiff was not an affidavit at all, and was therefore insufficient as a matter of law to prevent a finding of abandonment under MCL 211.79a(4)(d).

Finally, defendant argues that MCL 211.371 generally prevents tax sales of land owned by governmental bodies. Defendant did not raise this argument below, and this issue was not addressed by the trial court. Therefore, it is unpreserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Even if this issue were preserved, this argument lacks merit. The statutory provision relied on by defendant applies only to tax-delinquent property for which title has “vested in this state by virtue of a tax sale.” MCL 211.371(1). Such title can vest in the state only if the property is bid off to the state at tax sale. See former MCL 211.60a through

211.74.¹ Here, the property was bid off to plaintiff, and plaintiff ultimately obtained a tax deed after the redemption period. Thus, title did not vest in the state and MCL 211.371 does not apply.

In light of our decision, we need not reach the other issues raised by plaintiff. Because plaintiff failed to strictly follow the procedural requirements for invoking MCL 211.79a, this action is dismissed without prejudice. See e.g., *Scarsella v Pollak*, 461 Mich 547, 551-552; 607 NW2d 711 (2000).

Reversed and remanded for entry of dismissal without prejudice. Jurisdiction is not retained.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

¹ These provisions were repealed by 2001 PA 94, but continue to govern tax delinquencies occurring before December 31, 1998. The tax delinquency in the instant case occurred before that date.